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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,505	04/01/2004	Richard Kunkel	42526-3700	8620
21611	7590	01/22/2007		
SNELL & WILMER LLP 600 ANTON BOULEVARD SUITE 1400 COSTA MESA, CA 92626			EXAMINER FETSUGA, ROBERT M	
			ART UNIT 3751	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/816,505	Applicant(s) KUNKEL, RICHARD	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-8 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-8 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/11/06</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 11, 2006 has been entered.

2. The drawings are objected to because reference numeral "30" (par. 0018 ln. 3) is missing. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in

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the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The disclosure is objected to because of the following informalities: Paragraph 0017, lines 1 and 2, "17" apparently should be --18--.

Appropriate correction is required.

4. Claims 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 depends from a cancelled claim. Claim 7 depends from claim 6.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made..

6. Claims 1-3 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg and Koren et al. '342.

The Ruthenberg reference (Fig. 5) discloses a combination comprising: a container having a rim (col. 1 lns. 7-10); and a waterfall including a plenum chamber 20-26 having walls 20,22, an inlet 17, an outlet 31 and a baffle 40, and a spout having a mouth 15, a top 18 and a bottom 28. Re claim 1, the term "spa" does not connote any structure of the claimed container over the container disclosed by Ruthenberg. Re claim 3, the choice of flow areas would appear obvious choices to be made in order to optimize performance. Re claim 10, the Ruthenberg inlet is "permanently fastened" to the plenum chamber (col. 4 lns. 1-2). Therefore, Ruthenberg teaches all claimed elements except for the provision of a light source.

Although the waterfall of the Ruthenberg combination does not include a light source, as claimed, attention is directed to

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the Koren et al. '342 ('342) reference which discloses an analogous combination (col. 1 lns. 8-11) which further includes a waterfall 10 having a light source 12. Therefore, in consideration of '342, it would have been obvious to one of ordinary skill in the combination art to associate a light source with the Ruthenberg waterfall in order to enhance appearance. Re claim 1, the '342 light source is capable of injecting light "directly into the water flowing out of the spout after it has left the spout" as is discussed in '342 at column 2, line 48 through column 3, line 5.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg and '342 as applied to claim 1 above, and further in view of Simpson et al.

Although the spout of the Ruthenberg waterfall does not include a bezel, as claimed, attention is directed to the Simpson et al. (Simpson) reference (Figs. 7-9) which discloses an analogous waterfall which further includes a spout 88 having a bezel 94. Therefore, in consideration of Simpson, it would have been obvious to one of ordinary skill in the waterfall art to associate a bezel with the Ruthenberg spout in order to enhance use.

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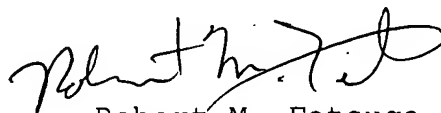
8. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruthenberg and '342 as applied to claim 1 above, and further in view of Koren et al. '100.

Although the inlet of the Ruthenberg plenum chamber does not include walls, as disclosed, attention is directed to the Koren et al. '100 ('100) reference which discloses an analogous plenum chamber 31,36 which further includes an inlet 25 having walls 21-24,26. Therefore, in consideration of '100, it would have been obvious to one of ordinary skill in the plenum chamber art to associate walls with the Ruthenberg inlet in order to facilitate assembly.

9. Applicant's remarks have been fully considered and have been previously addressed.

10. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

11. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.



Robert M. Fetsuga
Primary Examiner
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